APPENDIX A

Statutes Involved

(All extracts from U.S.C.)

Labor-Management, Reporting and Disclosure Act of 1959, *Title* 29, *U.S.C.:*

§ 521. Investigations by Secretary; applicability of other laws

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. Pub.L. 86-257, Title VI, § 601, Sept. 14, 1959, 73 Stat. 539.

* * * * * * * * * *

§ 524. Effect on State laws

Nothing in this chapter shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to robbery, bribery, extortion embezzlement, grand larceny, burglary, arson,

violation of narcotics laws, murder, rape, assault with intent to kill, or assault which inflicts grievous bodily injury, or conspiracy to commit any of such crimes. Pub.L. 86-257, Title VI, § 604, Sept. 14, 1959, 73 Stat. 540.

* * * * * * * * * * *

§ 527. Cooperation with other agencies and departments

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this chapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this chapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this chapter as may be found to warrant consideration for criminal prosecution under the provisions of this chapter or other Federal law. Pub.L. 86-257, Title VI, § 607, Sept. 14, 1959, 73 Stat. 540.

Federal Trade Commission Act, Title 15, *U.S.C.:*

§ 49. Documentary evidence; depositions; witnesses

For the purposes of sections 41-46 and 47-58 of this title the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose

of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of sections 41-46 and 47-58 of this title or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under said sections at any stage of such proceeding or inves-

tigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. Sept. 26, 1914, c. 311, § 9, 38 Stat. 722.

§ 50. Offenses and penalties

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience

to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under sections 41-46 and 47-58 of this title, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to said sections, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by sections 41-46 and 47-58 of this title to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture

shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court. Sept. 26, 1914, c. 311, § 10, 38 Stat. 723; June 25, 1948, c. 646, § 1, 62 Stat. 909.

APPENDIX B

Opinion and Judgment Below

OPINION

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 512 and 513—September Term, 1963

(Argued August 6, 1964—Decided September 1, 1964)
Docket Nos. 29041 and 29082

HENRY R. AHLERS, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*

Before: Lumbard, Chief Judge, Waterman and Hays, Circuit Judges.

Appeals from orders of the United States District Court for the Southern District of New York, Tyler, J., and from an order of the same court, Palmieri, J., directing appellant to testify, adjudging appellant in contempt and committing appellant for civil contempt.

Affirmed.

Andrew J. Maloney, Assistant United States Attorney, New York City (Robert M. Morgenthau, United States Attorney for the Southern District of New York, Andrew J. Maloney, John E. Sprizzo, and Neal J. Hurwitz, Assistant United States Attorneys, of counsel), for the United States of America.

Herbert S. Siegel, New York City, for Appellant.

PER CURIAM:

Appellant was adjudged in contempt and committed for refusing to answer questions addressed to him in the course of a Labor Department investigation, after having been granted immunity and after having been ordered by the District Court to testify. The investigation was conducted by a representative of the Secretary of Labor under the authority of 29 U.S.C. § 521(a) which empowers the Secretary "when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter . . . to make an investigation and in connection therewith . . . [to] question such persons as he may deem necessary to enable him to determine the facts relative thereto."

The appellant's principal submission is that the Secretary had no power effectively to grant immunity. This contention, which purports to be based on the statutory language and the legislative history is wholly without foundation. The language of Section 521(b) clearly incorporates by reference Sections 49 and 50 of Title 15. Section 49 of Title 15 provides for immunity for witnesses who are required to testify after a claim of privilege. Nothing in the legislative history of Section 521 casts any doubt on the conclusion.

Appellant's other contentions are equally without merit.

Orders affirmed.

Judgment in Calendar No. 512

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the first day of September one thousand nine hundred and sixty-four.
Present:

HON. J. EDWARD LUMBARD, Chief Judge
HON. STERRY R. WATERMAN,
HON. PAUL R. HAYS,
Circuit Judges.

In the Matter of
HENRY R. AHLERS, Respondent-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO, Clerk
By Vincent A. Carlin
Chief Deputy Clerk

Judgment in Calendar No. 513

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the first day of September one thousand nine hundred and sixty-four.

Present:

HON. J. EDWARD LUMBARD, Chief Judge
HON. STERRY P. WATERMAN,
HON. PAUL R. HAYS,
Circuit Judges.

UNITED STATES OF AMERICA, Petitioner-Appellee,

v.

HENRY R. AHLERS, Respondent-Appellant

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO, Clerk
By Vincent A. Carlin
Chief Deputy Clerk

APPENDIX C

U.S. DEPARTMENT OF LABOR
BUREAU OF LABOR-MANAGEMENT REPORTS
WASHINGTON 25, D. C.

Mr. Herbert J. Miller, Jr.
Assistant Attorney General
Criminal Division
U. S. Department of Justice
Constitution Avenue between 9th
and 10th Streets, N.W.
Washington 25, D. C.

Dear Mr. Miller:

In accordance with your request by letter of March 14, 1963 and pursuant to the authority granted to the Secretary of Labor by Section 601 of the Labor Management Reporting and Disclosure Act of 1959, which has been delegated to the undersigned Commissioner of the Bureau of Labor-Management Reports, I hereby delegate to the Department of Justice authority to conduct an investigation into any violation of said Act in connection with an investigation of Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Santurce, Puerto Rico.

It is understood by this delegation that the Bureau of Labor-Management Reports will retain investigative jurisdiction in connection with failure of Local 901 to file union reports pursuant to Section 201 of the Act.

We are forwarding a copy of this letter along with the requested ad testificandum subpoenas to Special U. S. Attorney Thomas A. Kennelly c/o Office of U. S. Attorney, P. O. Box 3391, San Juan 15, Puerto Rico.

Sincerely,

JOHN L. HOLCOMBE
Commissioner

cc: Thomas A. Kennelly